IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 367 of 2005
Reserved on: 25.2.2026
Date of Decision: 31.03.2026

Tulsi Ram & ors. ...Appellants

Versus

Chet Ram & ors. ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***Yes.***

For the Appellants : M/s Mohinder Verma and Sumit Sharma, Advocates.

For the Respondents : M/s Dinesh Kumar and Y. Paul, Advocates.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 20.4.2005, passed by learned Additional District Judge, (Presiding Officer), Fast Track Court, Solan, District Solan, H.P. (learned First Appellate Court), vide which the judgment and decree dated 30.7.2003, passed by learned Civil Judge, Junior Division, Arki, District Solan, HP, (learned Trial Court) were upheld. (*Parties shall hereinafter be referred to in*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

the same manner as they were arrayed before the learned Trial Court for convenience.

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court for seeking permanent prohibitory injunction restraining the defendant from interfering in the peaceful possession of the plaintiff and cutting and removing the trees from the suit land comprised in Khata/Khatauni No. 3/3, Khasra Nos. 9 and 11, measuring 33-15 bighas, situated in Village Samoth, Pargana Deora, Tehsil Solan, H.P. It was asserted that the plaintiffs are joint owners-in-possession of the suit land. The defendants trespassed into the suit land on 20.5.1996 and threatened to cultivate it, cut and remove the standing trees from it. Hence, a suit was filed for seeking relief(s) mentioned above.

3. The suit was opposed by filing a written statement, as amended before the learned Trial Court and the learned Appellate Court, taking preliminary objections regarding lack of maintainability, locus standi and cause of action, suit being barred by limitation, suit being bad for non-joinder of necessary

parties, suit having not been properly valued for Court fees and jurisdiction, suit being bad for proper identification of the suit land, plaintiffs being estopped to file the present suit by their own acts and conduct, and the plaintiffs having concealed the material facts from the Court. The contents of the plaint were denied on merits. It was asserted that the possession of the suit land measuring 17-9 bigha was with the defendants. The pencil entry of the name of the defendant was made in the Jamabandi, which was removed without any basis. The plaintiff No. 2 quarrelled with the defendant over taking possession, and a criminal case was registered. Defendant had also filed a correction application before Teshildar, Arki, in which an inquiry was conducted. Possession of the defendant was verified in Khasra No.11/1. The plaintiffs concealed the family settlement effected between the plaintiffs and defendant Tulsi Ram, which was reduced into writing on 10.1.1977. Hence, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaint was filed. It was asserted that no pencil entry was made in favour of Tulsi Ram. The defendant did not raise any objection at the time of the

removal of the entry. The defendants never remained in possession of the suit land. They interfered with the possession of the plaintiffs. It was specifically denied that any family settlement had taken place between the parties. It was asserted that Bhagi Rath was the tenant, who was conferred with the proprietary rights under the H.P. Abolition of Big Land Estate and H.P. Land Reforms Act. He deposited the compensation and became the owner. Defendants had no right over the suit land. Hence, it was prayed that the suit be decreed.

5. Learned Trial Court framed the following issues on 30.9.2000 and additional issues on 29.10.2002: -

1. Whether the plaintiffs are joint owners in possession of the suit land as alleged? OPP.
2. Whether the plaintiffs are entitled to the relief of injunction as prayed for? OPP.
3. Whether the suit is not maintainable as alleged? OPD.
4. Whether the plaintiffs have no cause of action? OPD.
5. Whether the plaintiffs have no locus standi to file the present suit? OPD.
6. Whether the suit is not within limitation? OPD.
7. Whether the suit is bad for non-joinder of necessary parties? OPD.
8. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD.
9. Whether the plaintiffs are estopped from filing the present suit by their acts and conduct? OPD.

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9-A. Whether Shri Bhagi Rath and Shri Tulsi Ram were to inherit the tenancy of late Shri Keshav Ram in equal shares as alleged? OPD.

9-B. Whether the mutation No.63 dated 31.7.1965 attested and accepted in favour of Shri Bhagi Rath alone is illegal, null and void as alleged? OPD.

9-C. Whether the revenue entries showing Shri Bhagi Rath and plaintiffs alone as owners-in-possession of the suit land are wrong and illegal as alleged? OPD.

9-D. Whether this Court has no jurisdiction to determine the issue of tenancy between the parties as raised by the defendants in para No. 2-A of his written statement? OPP.

10. Relief.

6. The parties were called upon to produce evidence. The plaintiffs examined plaintiff No.2 Bhagwan Dass (PW1) and Geeta Ram (PW2). Defendants examined Naveen Kumar (DW1), Tulsi Ram (DW2), Rishi Ram Dogra (DW3), Ram Krishan (DW4), Kanhiya Ram (DW5), Sant Ram (DW6). The defendants recalled Kanhiya Lal (DW1), Tulsi Ram (DW2) and examined Lekh Ram (DW8) after the amendment of issues. Tulsi Ram (defendant) and Bhagwan Dass (plaintiff) were examined before the learned Appellate Court.

7. The learned Trial Court held that the plaintiffs' witnesses and revenue entries proved their possession. The evidence of the defendant was not sufficient to rebut the plaintiffs' evidence. Keshav Ram, grandfather of the parties, was recorded as a non-occupancy tenant till 1942-43. Defendant

No.1 was entitled to inherit the tenancy rights with Bhagi Rath, but the mutation was not entered based on the natural succession. The defendants failed to challenge the mutation conferring the proprietary rights as per the law, and they could not do so in the present suit. The defendants claimed possession of 17 bighas 09 biswas of the land, but they did not file any tatima to show their possession. The defendants claimed ownership which amounts to sufficient interference with the possession of the plaintiffs. Hence, the learned Trial Court answered Issues No.1, 2 and 9A in the affirmative, the rest of the issues in the negative and decreed the suit.

8. Being aggrieved from the judgment and decree passed by the learned Trial Court, the defendants filed an appeal which was decided by the learned Additional District Judge, Presiding Officer (Fast Track Court), Solan, H.P. (learned Appellate Court). Learned Appellate Court held that Tulsi Ram is the son of Sadhu, son of Keshav. Bhagi Rath was the brother of Keshav. The defendants failed to produce any mutation of the succession of the tenancy. Only an occupancy tenancy was inheritable and not a non-occupancy tenancy. There was no evidence that Tulsi Ram was paying any rent. Tulsi Ram was

aged 8-9 years at the time of the death of his grandfather, and his version that he was a tenant or had participated in the division of the property was not reliable. The evidence regarding the possession of Tulsi Ram was not satisfactory, whereas the evidence of the plaintiffs was duly corroborated by the revenue record. There was no infirmity in the judgment and decree passed by the learned Trial Court. Hence, the appeal was dismissed.

9. Being aggrieved from the judgment and decree passed by the learned First Appellate Court, the present appeal has been filed, which was admitted on the following substantial questions of law on 22.7.2005 and additional substantial questions of law were framed on 30.7.2024. : -

1. Whether the Courts below have ignored the family settlement Ex. DX, which took place between the parties in the year 1971?
2. Whether Ex.DW7/A Jamabandi for the year 1941-42 has been misread and misinterpreted by the Courts below, which shows that the defendants are in the joint possession with the plaintiffs over the suit land?
3. Whether the mandatory provisions of Order 20 CPC have been ignored by the Courts below by clubbing all the material issues and all the issues were required to be decided separately?

4. Whether the Civil Court has got the jurisdiction to determine the controversy qua the tenancy rights in favour of the plaintiffs?

(i) Whether findings recorded by both the Courts are vitiated on account of misreading, misconstruction and misinterpretation of the pleadings of parties and oral as well as documentary evidence on record.

(ii) Whether mere suit for injunction without seeking declaration of their alleged absolute ownership right and possession is not maintainable and the same is liable to be dismissed especially when the Defendant No.1 Tulsi Ram son of Sh. Sadh son of Sh. Keshwa Nand has claimed hat he succeeded to the tenancy rights in equal share with Sh. Bhagi Rath son of Sh. Keshwa Nand.

(iii) Whether the findings recorded by Ld. Trial Court on issue No.9A could be reversed by the Ld. Additional District Judge in the absence of cross objection/Appeal.

10. I have heard M/s Mohinder Verma and Sumit Sharma, learned counsel for the appellants/defendants and M/s Dinesh Kumar and Y. Paul, learned counsel for the respondents/plaintiffs.

11. Mr Mohinder Verma, learned counsel for the appellants/defendants, submitted that the learned Courts below erred in holding that the defendants were not in possession of the suit land or that Tulsi Ram had not succeeded to the estate of his grandfather. The non-occupancy tenancy is regulated by

succession. Therefore, he prayed that the present appeal be allowed and the judgments and decrees passed by learned Courts below be set-aside. He relied upon the following judgments in support of his submission:

(i) ***Charno Devi and ors. Vs. Dali Mal (deceased) through his L.Rs. Shamsher Singh and others, 1994 (2) Shim. LC 279;***

(ii) ***Gurunath Manohar Pavaskar & ors. Vs. Nagesh Siddappa Navalgund & ors. AIR 2008 SC 901;***

(iii) ***Gurmit Ram & ors. Vs. Financial Commissioner, Revenue, Punjab and others PLJ 1979 PG 152.***

(iv) ***State of H.P. Vs. Keshav Ram and others. AIR 1997 SC 2181;***

(v) ***Union of India & ors. Vs. Vasavi Co-op. Housing Society Ltd. & ors. 2014 SLC (1) 411.***

12. Mr Dinesh Thakur, learned counsel for the respondents/plaintiffs, submitted that both the learned Courts below had rightly held that the non-occupancy tenancy is not heritable. There is no infirmity in the findings recorded by the learned Courts below, and this Court should not interfere with the concurrent findings of fact recorded by the learned Courts below. Therefore, he prayed that the present appeal be dismissed.

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13. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law No. 1:

14. The defendants relied upon the family settlement (Ex.DX) before the learned Appellate Court by way of additional evidence, which was a memorandum of partition and mentioned the land allotted to Tulsi Ram, Bhagwan Dass and Chet Ram. It mentions the local names of the land allotted to each of the signatories. It also mentions that Tulsi Ram had left some land in favour of Chet Ram. The nature of the document shows that it extinguished the existing rights of the parties and conferred new rights upon them. Therefore, it would require compulsory registration. It was laid down by the Hon'ble Supreme Court in ***Roshan Singh v. Zile Singh, (2018) 14 SCC 814,*** that when the instrument of partition is intended to operate a declared volition constituting or severing ownership and changing legal position, it is compulsorily required to be registered, in the absence of which it cannot be looked into. It was observed: -

> "**9.** It is well settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing onwership and causes a change of legal relation to the property divided amongst

> the parties to it, requires registration under Section 17(1)(*b*) of the Act, a writing which merely recites that there has *in time past* been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well settled that a mere list of properties allotted at a partition is not an instrument of partition and does not require registration. Section 17(1)(*b*) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right, and there would be no necessity of registering such a document. Two propositions must therefore flow: (*1*) A partition may be effected orally; but if it is subsequently reduced into a form of a document and that document purports by itself to effect a division and embodies all the terms of the bargain, it will be necessary to register it. If it be not registered, Section 49 of the Act will prevent its being admitted in evidence. Secondary evidence of the factum of partition will not be admissible by reason of Section 91 of the Evidence Act, 1872. (2) Partition lists, which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered, to prove the fact of partition: see *Mulla's Registration Act*, 8th Edn., pp. 54-57."

15. In the present case, the document (Ex. DX) severed the status of the co-sharers in relation to the land from the date of the execution of the instrument, and conferred new rights upon the parties. Therefore, it was compulsorily required to be

registered and could not have been looked into without the registration. Admittedly, the document (Ex. DX) was not registered and could not have been looked into. Therefore, there is no error in ignoring the family settlement, and this substantial question of law is answered accordingly.

Substantial Question of Law No. 2:

16. Copy of Jamabandi for the year 1941-42 (Ex.DW7/A) shows Keshav Ram, son of Bhajju, to be a non-occupancy tenant over Khata No.2, Khatauni No.3, Kitta-2, measuring 33.15 bighas. The plaintiffs did not dispute in the written statement that Keshav Ram was the tenant of the suit land. They asserted that proprietary rights were conferred upon Bhagi Rath, as Tulsi Ram never remained a tenant over the land, and only Bhagi Rath was the tenant. Bhagwan Dass (PW1) admitted in his cross-examination that Bhagi Rath and Sadhu Ram were brothers, and his grandfather, Keshav Ram, was the tenant. Hence, the fact that Keshav Ram was a tenant and Bhagi Rath and Sadhu Ram were his sons, and Tulsi Ram is the son of Sadhu Ram are not disputed.

17. Learned Trial Court held that there was no evidence that tenancy was inherited by way of natural succession. Learned Appellate Court held that only an occupancy tenancy is heritable, and a non-occupancy tenancy cannot be inherited. The copy of the Jamabandi for the year 1941-42 (Ex.DW7/A) contains the endorsement in the column of remarks that Keshav had died and Bhagi Rath was in possession. Plaintiff Bhagwan Dass nowhere claimed that a fresh tenancy was created in favour of Bhagi Rath by the land owners, and the entry shows that it was based on natural succession. Thus, the learned Trial Court erred in holding that there was no proof of the fact that Bhagi Rath had succeeded to the tenancy by way of natural succession.

18. Learned Appellate Court held that non-occupancy tenancy was not heritable, Tulsi Ram was not entitled to inherit the tenancy with Bhagi Rath, and the observations of the learned Trial Court were contrary to the law. The attention of the learned Appellate Court was not brought to the binding precedents of this Court.

19. It was held by this Court in ***Charno Devi and ors. Vs. Dali Mal (deceased) through his L.Rs. Shamsher Singh and others,***

1994 (2) Shim. LC 279, that the Punjab Tenancy Act provides for the devolution of the tenancy upon the heirs of a tenant after his death, irrespective of the fact whether the tenancy is occupancy or a non-occupancy. It was observed: -

> "18. In the instant case, it is not in dispute that the Act is the local law in force in the State of Himachal Pradesh providing for devolution of the rights of a tenant on his death, irrespective of the fact whether he is an occupancy tenant or a non-occupancy tenant. The order in which the right of tenancy is to devolve has been enumerated in section 45 of the Act, which neither in express terms nor impliedly provides for the extinguishment of the rights of a tenant in the event of there being none available on the date of death, out of the persons as specified in Clauses (a) to (d). The legislature was aware, at the time of the enactment of the Act, of subsection (4) of section 59 of the Punjab Tenancy Act, 1887, providing for the extinguishment of rights of tenancy in the eventuality of there being none on whom, under sub-section (1) of section 59, such a right may devolve. Section 45 of the Act cannot be construed in such a manner so as to incorporate therein a provision similar to the one as was contained in subsection (4) of section 59 of the Punjab Tenancy Act, so as to read therein a clause providing for the extinguishment of tenancy rights. In case it is done, it will amount to supplying words in a statute that are not there."

20. It was held in ***Smt. Nathi Vs. Shri Ned Chand 1997 (2) Shim. LC 179 HP*** that the heirs of a non-occupancy tenant would succeed to the tenancy as per the general law of succession. It was observed: -

> "33. Having held that the succession of tenancy rights of a tenant-at-will would not be governed by section 59, Punjab Tenancy Act, 1887, the question which arises for determination is as to how the succession in such a case is to be regulated.
> 34. Admittedly, save and except section 59, Punjab Tenancy Act, 1887 there is no other provision in the said Act governing succession to the tenancy rights of a tenant at-will In the absence of such a provision in the relevant tenancy laws as in force at the relevant time, succession to the tenancy rights of a tenant-at-will prior to the coming into force of the H. P. Tenancy and Land Reforms Act, 1972, in the areas to which the provisions of Punjab Tenancy Act, 1887, were applicable, would, therefore, be governed by the general law of succession, viz, Hindu Succession Act, 1956. Under section 8 of the said Act widow and son(s) succeed to the estate of the deceased in equal shares."

21. This judgment was followed in ***Hari Singh and others Vs. Milap Chand 2000 (1) Shim. LC 403,*** and it was held that the non-occupancy tenancy is not governed by Section 59 of the Punjab Tenancy Act but by Section 8 of the Hindu Succession Act. It was observed:-

> "5. This Court has heard learned counsel for the parties and gone through the record. At the time of admission substantial question of law was not framed. During the course of arguments, learned counsel for the defendants has urged that concurrent findings arrived at by both the Courts below deserve to be interfered with on the substantial questions of law (i) whether non-occupancy tenancy under the Punjab Tenancy Act was heritable; (ii) Whether the presumption of truth attached to the revenue entries which are in favour of the defendants that

their father late Chuni Lal was in exclusive possession as tenant stood rebutted to hold the plaintiff in joint possession with him and after his death with defendants. Arguing the first substantial question of law, learned counsel has pointed out that in the year 1970, when Chamaru had died, the Act had not come into force and the Addl. The District Judge has erred in holding that the plaintiff had a right to inherit the tenancy rights to the extent of a 1/2 share under Section 45 of the Act. According to the learned counsel, since the suit land is in District Kangra, which is part of the erstwhile State of Punjab, before its merger with the State of Himachal Pradesh, the Punjab State Tenancy Act was applicable, and the inheritance of tenancy rights will be governed by it, under which there is no provision for succession of non-occupancy tenancy rights. This submission is correct, and there is no difficulty in accepting it, but unfortunately, it does not help the learned counsel for the defendants. No doubt, Section 59 of the Punjab Tenancy Act governs the succession in the case of a tenant having a right of occupancy and a tenant having a right of non-occupany i.e. tenant at will are not covered by this provision. Therefore, the question arises which law will govern the succession in the case of a tenant having a right of non-occupancy (tenant at will). The answer will be found in the general law of succession, i.e. Hindu Succession Act, 1956, Section 8 of which provides that the widow and son(s) succeed to the estate of the deceased in equal shares. Therefore, this Court has no hesitation to hold that the plaintiff had a right to succeed to the tenancy rights of the suit land along with his brother, late Chuni Lal, in equal share after the death of their father in the year 1970, and he has been deprived of that right wrongly and illegally as held by both the Courts below. For taking this view, this Court has taken support from the judgment of the learned Single Judge in ***Smt. Nathi v. Shri Neel Chand, 1997 (2) Shim. L.C. 179***."

22. Therefore, the learned Appellate Court erred in

holding that the non-occupancy tenancy could not be inherited. The non-occupancy tenancy was to be inherited as per the provisions of the Succession Act.

23. Section 8 of the Hindu Succession Act deals with the general rules of succession in case of males. Section 8(a) of the Hindu Succession Act provides that the property of a male Hindu shall devolve upon his heirs specified in Class I of the schedule. The schedule mentions the son of the predeceased son as the heir along with the son. Thus, as per the Hindu Succession Act, the son of the predeceased son is entitled to succeed to the estate of a Hindu. Even if the Hindu Succession Act was not applicable, the son of a predeceased son is a coparcener and would get a right in the property on the date of his birth. Thus, the learned Courts below erred in holding that Bhagirath alone would inherit the estate of Keshav. The defendant no. 1, being the son of the predeceased son, was entitled to inherit the tenancy with Bhagirath. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No.3:

24. It was submitted that the learned Trial Court erred in taking the issues together. This submission cannot be accepted.

It was laid down by this Court in ***Hiru vs. Mansa Ram 2003 (1) Curr. L.J. 133*** that the judgment of the court is not bad simply because issues were taken together for discussion. It was observed:

> "8. A bare perusal of this rule shows that the Court has to give a decision on each of the issues along with reasons thereof unless the findings upon any one or more of the issues are sufficient for the decision of the suit. There is nothing in the language of Rule 5 of Order 20 which indicates that two or more issues cannot be clubbed together for discussion and findings in the context of the evidence on record. What is required by rule 5 is that the Court has to give its findings on all the issues unless the findings on any one or more of the issues are sufficient for the decision of the suit. The provision is aimed at curbing unnecessary protraction of litigation. The true import of rule 5 of order 20, as pointed out by a Division Bench of Patna High Court in ***Ram Ranbijaya Prasad Singh v. Sukar Ahir, AIR 1947 (34) Patna 334***, is that the Courts of fact must decide all the issues of fact which arise between the parties so that if the appellate court takes a different view, the parties are saved from further harassment. However, clubbing most of the issues and writing a conclusion at the end of the judgment would not contravene rule 5 of order 20 of the Code, nor would it vitiate the findings for that reason.
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> 9. It is true that sometimes Judicial Officers as a convenience club together all or most of the issues and write a judgment though not often without applying their minds on a particular matter that has to be decided under each issue and then conclusions on several issues are given at the end of the judgment but even such a judgment cannot be said to contravene the provisions of rule 5 of Order 20 of the Code which requires no more than that reasons should be given for the findings in

> respect of each issue. Such a judgment may be open to criticisms, but it cannot be said to be no judgment in the eyes of the law."

25. This position was reiterated in ***Jagat Singh vs. Shanti Swaroop 2007 HLJ 192,*** wherein it was held:

> "13. Now coming to the question with regard to the discussion and decision by the learned trial court of issues No.1, 3 and 6 together. As far as Issues No.1 and 3 are concerned, I am of the opinion that there was no error committed by the trial court in discussing the deciding these issues together because both issues overlap to some extent. Though normally, the trial court should endeavour to decide every issue separately, there is no bar to two or more issues being decided together. Issues that overlap or where the same evidence has to be considered, and where points to be decided are similar in nature, can always be decided together. In the present case, I find that issue No.1 is with regard to the entitlement of the plaintiff to claim possession and issue No.3 is whether he was estopped by his acts, conduct and acquiescence from claiming possession. These could have been conveniently decided together by the learned trial court."

26. In the present case, the issues were related to each other and would have involved the repetition of the evidence; therefore, the learned Trial Court was justified in discussing the issues together. No prejudice has been shown to the parties by the discussion of the issues together. Hence, the substantial question of law is answered in the negative.

Substantial Question of Law No.4:

27. It was submitted that the order passed by the

Compensation Officer under the H.P. Big Land Abolition of Estates Act is final and cannot be challenged before the Court. This submission cannot be accepted. It was laid down by this Court in ***Rajinder Singh Vs. Shakuntla Devi and others, 2005 (3) Shim. LC 1,*** that a party aggrieved by an order passed by the Compensation Officer under the H.P. Abolition of Big Land Estate Act can file a civil suit to correct the error. It was observed: -

> "17. The moot point is that, as noticed above, there was no bar to the jurisdiction of the Civil Court under the Abolition Act. Even if a mistake had been committed by the Compensation Officer, any party was free to go to Court to challenge the same.
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> 18. A Division Bench of the Delhi High Court (Himachal Bench at Shimla) in ***Balak Ram v. Kanehya, 1968 Delhi Law Times, Vol-IV, 384***, held that the decision of the Compensation Officer on the question whether the applicant was a tenant was not conclusive so as to exclude the jurisdiction of the Civil Court. It was also held that the land owner can establish his right in a competent Civil Court that the person claiming to be his tenant is not a tenant.
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> 19. A Full Bench of the Delhi High Court (Himachal Bench at Shimla) in ***Chuhary v. Sirtu, 1968 Delhi Law Times, Vol-IV, 412***, considered this question and held that a tenant dispossessed without his consent from his tenancy or part thereof could file a civil suit for possession and the same would not be barred and the Civil Court had the jurisdiction to decide the case. A similar view has been taken by a single Judge of this Court in ***Gulabi v. Rukmani and others, 1995 (1) Sim. L.C. 159***.
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> 20. Therefore, it is clear that the jurisdiction of the Civil

> Court is not barred. If a mistake was made by the Compensation Officer, a party could either go to him to correct the mistake, or it could file an appeal to the District Judge, or it could file a civil suit. It was for the party concerned to decide which mode it adopted. The provisions of the Tenancy and Land Reforms Act barring the jurisdiction of the Civil Court cannot be applied to proceedings seeking correction of an order or proceedings or a map issued under the Abolition Act.

28. It was held by this Court in ***Shiam Singh v. Chaman Lal, 2010 SCC OnLine HP 689***, that the jurisdiction of the civil court is only barred to question the amount of compensation determined by the compensation officer and not to determine the rights. It was observed:

> "10. With regard to substantial question of law No. 1, it was submitted on behalf of the appellants that Civil Court's jurisdiction, to test the validity of the order of Compensation Officer, conferring proprietary rights, was barred, by virtue of the provision of sub-section (4) of Section 12 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953. From a bare reading of Section 12, which is reproduced below for ready reference, it is clear that finality attaches to an order of a Compensation Officer only with regard to the quantum of compensation and not with regard to the conferment of proprietary rights.
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> > **12.** (1) The amount of compensation payable by a tenant for the acquisition of the right, title and interest of the landowner in the land of the tenancy shall be determined by the Compensation Officer in accordance with the provisions of the Schedule.
> >
> > (2)(a) Any person aggrieved by an order of the compensation officer under subsection (1) may,

within forty-five days from the date of the order, appeal to the District Judge.

(b) Where any such appeal is preferred to the District Judge, he shall cause to be published in the prescribed manner a notice requiring the land owner or the tenant, as the case may be, to appear before him and, after giving the parties a reasonable opportunity of being heard, shall give his decision.

(c) As against the decision of the District Judge, an appeal shall lie within such period as may be prescribed to the Judicial Commissioner, whose decision shall be final and shall not be liable to be called in question in any court or before any authority.

(3) No decision of the District Judge or the Judicial Commissioner under sub-section (2) shall be invalid by reason of any defect in the form of notice or manner of its publication.

(4) Every decision of the Compensation Officer under this section shall, subject to the provision of sub-section (2), be binding on all persons claiming an interest in the holding concerned, notwithstanding any such person not having appeared or participated in the proceedings before the Compensation Officer, the District Judge or the Judicial Commissioner, as the case may be."

Therefore, the first substantial question of law, on which the appeal has been admitted, is answered against the appellants.

11. Coming to substantial question of law No. 2, in view of the answer to substantial question of law No. 1, this question does not survive, when it is held that Civil Court's jurisdiction is not barred in a matter of the present nature, but it is barred only when the dispute is

> with regard to the quantum of compensation determined by the Compensation Officer.
>
> 12. So far as the substantial question of law No. 3 is concerned, the jurisdiction of the Compensation Officer extends to the determination of compensation and settling the same between the land owner and the tenant. He does not have the jurisdiction to determine the rights of different persons, who claim to be tenants and are, as such, entitled to conferment of proprietary rights on payment of compensation. Hence, there is no question of the finding, if any, of the Compensation Officer that Nand Lal was the exclusive tenant, operating as *res judicata* in the present litigation."

29. In the present case, the tenancy was inherited by Tulsi Ram and Bhagi Rath, and the proprietary rights could not have been conferred upon Bhagi Rath alone. This was a mistake committed by the Compensation Officer, which can be rectified by the Civil Suit and the jurisdiction of the Civil Court is not barred; hence, this substantial question of law is answered accordingly.

30. The judgments in ***Gurunath Manohar Pavaskar*** (supra), ***Keshav Ram*** (supra) and ***Vasavi Co-op. Housing Society Ltd.*** (supra) deal with the principle that the revenue entries are presumed to be correct but they cannot form the basis/title. There is no dispute with this proposition of law. The judgment in ***Gurmeet Ram*** (supra) deals with the succession of the tenancy

under Pepsu Tenancy and Agriculture Land Act which is inapplicable to the present case. Hence, no advantage an be derived from the cited judgments.

Substantial Question of Law No.(i):

31. Learned Trial Court held that Bhagi Rath and Tulsi Ram were entitled to inherit the tenancy of late Sh. Keshav Ram in equal share but there was no evidence that mutation was recorded on the basis of succession which is actually incorrect as noticed above. Learned Appellate Court held that the non-occupancy tenancy is not heritable which is in ignorance of the judgments passed by this Court. Therefore, the findings recorded by learned Courts below are based upon the misinterpretation of the evidence on record. Hence this substantial question of law is answered accordingly.

Substantial Question of Law No.(ii):

32. The Hon'ble Supreme Court held in ***Anathula Sudhakar v. P. Buchi Reddy*, *(2008) 4 SCC 594: 2008 SCC OnLine SC 550*** that where the plaintiff is in lawful possession of the property and the defendant interferes with such a possession, a suit for an injunction will lie. A prayer for declaration will only be necessary when the denial of the title by defendant raises a

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cloud on the title of the plaintiff to the property in a sense that there is some apparent defect in the title to a property when or some prima facie right of third party is shown over the land. It was observed:-

> 13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.
>
> > 13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered with or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. However, a person in wrongful possession is not entitled to an injunction against the rightful owner.
> >
> > 13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.
> >
> > 13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the

plaintiff will have to file a suit for declaration, possession and injunction.

14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to rise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for an injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."

33. It was held in ***Jharkhand State Housing Board v. Didar Singh, (2019) 17 SCC 692 : (2020) 3 SCC (Civ) 588: 2018 SCC OnLine SC 2170*** that every dispute does not oblige the plaintiff to file a

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civil suit for declaration and the dispute should be genuine. It was observed at page 694:

> "**10.** The issue that falls for our consideration is: "Whether the suit for a permanent injunction is maintainable when the defendant disputes the title of the plaintiff?"
>
> **11.** It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff, it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for a mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, the plaintiff cannot maintain a suit for bare injunction."

34. A similar view was taken in ***Kayalulla Parambath Moidu Haji v. Namboodiyil Vinodan, 2021 SCC OnLine SC 675*** wherein it was observed:

> "**12.** It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of a comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.
>
> **13.** No doubt, this Court has held that where there are necessary pleadings regarding title and appropriate issues relating to the title on which parties lead evidence if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. However, it has been held that such

> cases are the exception to the normal rule that the question of title will not be decided in suits for injunction".

35. In the present case, the plaintiffs are recorded to be in possession being the successor of Bhagi Rath in the revenue record. There was no apparent defect on the date of the institution of the suit. The mere fact that the defendants had taken a plea that they were to inherit the tenancy of Keshav Ram was a matter of adjudication which would not oblige the plaintiffs to file a civil suit for declaration. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No.(iii):

36. Order 41 Rule 22 of the CPC provides that any respondent may not only support the decree but may also state that finding against him in respect of any issue ought to have been in his favour. Thus, a right is conferred upon the respondent to challenge any finding which is against him without filing a cross objection. It was laid down by Hon'ble Supreme Court in ***S. Nazeer Ahmed v. State Bank of Mysore, (2007) 11 SCC 75*** that the respondent can support the decree of the Trial Court even by challenging any finding recorded by learned Trial Court. He is not required to file a cross objection to do so. The

cross objection is only required to be filed when he seeks a relief which was denied by the learned Trial Court. It was observed:-

> **7.** The High Court, in our view, was clearly in error in holding that the appellant not having filed a memorandum of cross-objections in terms of Order 41 Rule 22 of the Code, could not challenge the finding of the trial court that the suit was not barred by Order 2 Rule 2 of the Code. The respondent in an appeal is entitled to support the decree of the trial court even by challenging any of the findings that might have been rendered by the trial court against himself. For supporting the decree passed by the trial court, it is not necessary for a respondent in the appeal, to file a memorandum of cross-objections challenging a particular finding that is rendered by the trial court against him when the ultimate decree itself is in his favour. A memorandum of cross-objections is needed only if the respondent claims any relief which had been negatived to him by the trial court and in addition to what he has already been given by the decree under challenge. We have therefore no hesitation in accepting the submission of the learned counsel for the appellant that the High Court was in error in proceeding on the basis that the appellant not having filed a memorandum of cross-objections, was not entitled to canvas the correctness of the finding on the bar of Order 2 Rule 2 rendered by the trial court.

37. Therefore, the respondent before learned Appellate Court was not required to file the cross objection for supporting the decree. Hence, this substantial question of law is answered accordingly.

Final Order:

38. In view of the above, the plea taken by the plaintiffs that the defendants have no right over the suit land and they

should be restrained by way of a permanent prohibitory injunction is not acceptable. Tulsi Ram succeeded to the tenancy along with Bhagi Rath and cannot be restrained being a co-owner. The learned Trial Court erred in decreeing the suit, and the learned Appellate Court erred in affirming the decree.

39. Hence, the judgments and decrees passed by learned Courts below are not sustainable, and they are ordered to be set-aside. The suit of the plaintiff is ordered to be dismissed. The record of the learned Courts below be returned forthwith.

40. Pending application(s), if any, also stand(s) disposed of.

(Rakesh Kainthla)
Judge

31st March, 2026
(Chander)